RECEIVED

APR - 3 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re applications of	)	MM Docket No. 93-75
	)	
Trinity Broadcasting of Florida, Inc. for Renewal of License of Station WHFT-TV, Miami, Florida	)	File No. BRCT-911001LY
	)	
Glendale Broadcasting Company for a Construction Permit for a New Commercial Television to Operate on Channel 45, Miami, Florida	)	File No. BPCT-911227KE

DOCKET FILE COPY ORIGINAL

To: Hon. Joseph Chachkin
Administrative Law Judge

REQUEST FOR OFFICIAL NOTICE

The Spanish American League Against Discrimination ("SALAD") respectfully requests official notice of the documents appended hereto:1/

Exhibit 1: Testimony of William E. Kennard, General Counsel, Federal Communications Commission, Before the Committee on Finance, United States Senate, on FCC Administration of Internal Revenue Code Section 1071, March 7, 1995 ("Kennard Testimony"

Exhibit 2: Testimony of Kenneth J. Kies, Chief of Staff, Joint Committee on Taxation, Before the Subcommittee on Oversight of the House Committee on Ways and Means, on the FCC Tax Certificate Program, January 27, 1995 ("Kies Testimony")

Exhibit 3: Statement of Glen A. Kohl, Tax Legislative Counsel, Department of the Treasury, Before the Subcommittee on Oversight of the House Committee on Ways and Means, on the FCC Tax Certificate Program, January 27, 1995 ("Kohl Testimony")

Exhibit 4: Official transcript of portion ABC's "Day One", March 23, 1995, discussing the FCC's tax certificate policy, March 23, 1995 ("Day One Transcript").

No. of Copies rec'd 0+4
List ABCDE

1/ If leave to file this Request is required, it is respectfully requested.

These documents are being brought to the Court's attention promptly. Official notice is appropriate, since the documents illuminate policy rather than law or adjudicative facts.2/ As shown below, these documents go the heart of why this case was tried and what this case stands for.

Extensive argument on a request for official notice is inappropriate. Thus, the following brief discussion is respectfully offered solely to illuminate the relevance of these documents and the purpose for which they are offered.

A principal issue in this case is whether Trinity Broadcasting Network ("TBN") abused the Commission's processes by creating National Minority TV, Inc. ("NMTV") and claiming that it was minority controlled.

The Bureau's Findings and Conclusions asked the Court to hold that "TBN was NMTV" (emphasis in original), Bureau F&C, ¶302, but nonetheless argued that TBN's conduct is not disqualifying. Id., ¶¶305 and 310.

The recent Congressional debate over the tax certificate policy, and the FCC's minority incentive policies generally, has focused the potential for abuse, with the legitimacy of the policies being linked closely to the questions of whether there has been substantial abuse and whether such abuses as might exist are remediable upon the complaints of third parties.3/

2/ Since each document for which official notice is sought has been published and is in the public domain, there should be no need to reopen the record and admit the documents as numbered exhibits.

3/ On January 17, 1995, the federal affirmative action case, Adarand Constructors, Inc. v. Peña, No. 93-1841, was argued before the Supreme Court. Justice O'Connor closely questioned Solicitor General Days on whether third parties have a meaningful ability to complain and ferret out abuses of the program in question. Justice O'Connor apparently viewed this issue to be of constitutional dimension.

Thus, the Court should appropriately take official notice of representative documents which amplify this issue, in order to evaluate whether the Bureau's Findings and Conclusions accurately reflect either current federal policy or Commission policy.4/ See Kennard Testimony at 13 (defining abuse as, inter alia, "a lack of real minority control of licenses") and Kies Testimony at 3 (expressing concern that abuse could arise when "a minority investor purports to control the buyer...but effectively does not because of the small economic interst of the minority investor"). The Treasury Department's counsel, Glen A. Kohl, described the "substance over form" doctrine, under which "a transaction must be taxed in accordance with its substance and not merely its form" and expressed concern that

> [i]n the absence of adequate safeguards against abuse, it is possible that an aggressive participant could devise a scheme that might enable parties to obtain a Section 1071 Certificate even in situations that do not meaningfully enhance the ownership of broadcasting properties by minorities. If such a scheme were to succeed, granting the Section 1071 Certificate would unfairly reward the participants of a tax avoidance scheme, possibly at the expense of a bona fide minority ownership group and/or a non-minority ownership group that was unwilling to engage in abusive tax planning.

Kohl Testimony at 3.

4/ SALAD does not believe the Bureau's position accurately reflects Commission policy. See SALAD Reply F&C, pp. 2-16. The documents provided here lend additional credence to SALAD's interpretation of Commission policy. Official notice of these self explanatory documents, rather than additional formal briefing of the issue, is the most efficient means to assist the Court should he feel it appropriate to address this issue. Official notice is appropriate at any time. Fed. R. Evid. Rule 201(f).

On March 23, 1995, the ABC-TV program "Day One" broadcast an extensive review of several tax certificate transactions viewed by many as questionable. Don Cornwell, President of Granite Broadcasting Compoany and an experienced African American television station owner, stated:

> I know a number of young entrepreneurs who want to get into this business and who view this program as a way for them to do it. And because of these abusive transactions, Congress is looking very hard at shutting it down.

Day One Transcript at 9. The next day, the United States Senate did in fact vote to terminate the program.

Respectfully submitted,

David Honig

David Honig
1800 N.W. 187th Street
Miami, Florida 33056
(305) 628-3600
(202) 332-7005

Counsel for the Spanish American
League Against Discrimination

April 3, 1995

EXHIBIT 1

STATEMENT OF

WILLIAM E. KENNARD
GENERAL COUNSEL
FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON FINANCE

ON

FCC ADMINISTRATION OF INTERNAL REVENUE CODE SECTION 1071

MARCH 7, 1995

Chairman Packwood and Members of the Committee:

Thank you for the opportunity to explain how the Federal Communications Commission has used Section 1071 of the Internal Revenue Code to further the FCC's and Congress' policies.

I. Introduction and Overview

Section 1071 of the Internal Revenue Code authorizes the FCC to permit sellers of broadcast properties to defer capital gains taxes on a sale or exchange if the sale or exchange is deemed by the agency to be "necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations." 26 U.S.C. § 1071.

Section 1071 was enacted in 1943 to alleviate the hardship of involuntary divestiture associated with the Commission's newly adopted multiple ownership rules. Those rules limited radio licensees to ownership of one outlet per market, and, as a result, some broadcast licensees were required to sell overlapping stations. Later, tax certificates were used in voluntary transfers as an incentive to licensees to divest themselves of properties grandfathered under another provision of the multiple ownership rules which limited the number of stations a single entity could own nationwide.

Since that time, the FCC has used tax certificates in other contexts to further the goals of national communications policy. Today, the FCC issues tax certificates to encourage:

- licensees to come into compliance with the FCC's multiple ownership rules
- microwave licensees to relocate to other frequencies to facilitate licensing of personal communications services
- owners of AM radio to divest themselves of licenses in certain frequency bands to reduce interference
- minority ownership.

I understand that this Committee is most interested in the FCC's use of tax certificates to promote minority ownership of broadcasting stations and cable television systems so I will focus on that area in my testimony today.

II. The FCC's Minority Tax Certificate Policy

A. Development of the Policy

Recognizing that the viewing and listening public suffers when minorities are underrepresented among owners of broadcast stations, the Commission began working to encourage minority participation in broadcasting in the late 1960s. Its first step was to formulate rules to prohibit discrimination in hiring and, several years later, in response to a court decision, it began to consider minority status in comparative licensing proceedings.

The decision to grant tax certificates in sales involving minority buyers was prompted by requests from the broadcasting industry and others in the late 1970s. In 1978, the

Commission's Minority Ownership Task Force reported that although minorities constituted approximately 20 percent of the population, they controlled fewer than one percent of the 8500 commercial radio and television stations then operating in the United States. Thus, the National Association of Broadcasters (NAB) proposed that the FCC establish a minority tax certificate policy to provide incentives for established broadcasters to sell radio and television stations to minority entrepreneurs.

The Commission agreed with NAB that underrepresentation by minorities contributed to a dearth of representation of minority views over the public airwaves. The Commission determined that an increase in ownership by minorities would inevitably enhance the diversity of programming available to the American public. Therefore, in 1978, the Commission issued a policy statement in which it determined that it would grant tax certificates to licensees that assign or transfer control of their authorizations to minority-controlled entities. Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978).

In 1981, the Chairman of the FCC, Mark Fowler, began a review of the Commission's minority ownership policies with the goal of finding new ways to advance minority ownership. To assist in this effort, he established the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications. The Advisory Committee identified lack of access to capital as the largest obstacle to minority ownership and identified the tax certificate as a successful way to enable minorities to attract financing.

As a result, the Commission, by a unanimous vote, took a number of steps in 1982 to make the tax certificate policy more effective in providing meaningful opportunities for minorities to enter the communications business.

First, it extended the tax certificate policy to sales of cable television systems. The Commission determined that cable operators, like broadcasters, exercise discretion in determining which broadcast and non-broadcast signals they will carry and, thus, taking steps to increase minority ownership would help to ensure that the viewpoints of minorities are adequately represented in cable television system programming.

In expanding the tax certificate program to cable systems, Chairman Fowler emphasized in a separate statement endorsing the Commission's decision that such actions aim squarely at the problem of minority financing opportunities. Mr. Fowler noted: "As President Reagan has said, the best hope for a strong economic future rests with a healthy, growing private sector. And the private sector does best when all have opportunities to enter it." See Statement of Policy on Minority Ownership of CATV Facilities, 52 R.R.2d 1469 (1982).

Second, the Commission modified the policy to allow issuance of tax certificates to investors in a minority-controlled broadcast or cable company upon the sale of their interests, provided that the interests were acquired to provide "start-up" capital to assist the company in acquiring its first broadcast or cable facilities. Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982). The

Commission found that by broadening the tax certificate policy in this manner "the pressing dilemma minority entrepreneurs face -- the lack of available financing to capitalize their telecommunications ventures -- is met and a creative tool of financing is created."

In 1990, the FCC's minority ownership programs were upheld as constitutional by the United States Supreme Court. The Court held that the Commission's policies designed to increase minority ownership were substantially related to the achievement of a legitimate government interest in broadcast diversity and that they did not impose an impermissible burden on nonminorities. Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990). The Supreme Court cited numerous empirical studies demonstrating that there is a nexus between minority ownership and increased program diversity. Although the Court decision did not specifically involve tax certificates, the rationale for the decision clearly applies to this program.

B. Legislative Constraints on Changes to the Minority Tax Certificate Policy

Late in 1986, the Commission commenced a proceeding to determine whether its minority ownership programs were appropriate as a matter of policy and constitutional law. It asked for public comment on a number of issues, including whether the Commission should continue to grant preferences to minorities and what social or other costs might result from the policies. Reexamination of the Commission's Comparative Licensing, Distress Sales and

Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications, 1 FCC Rcd 1315 (1986).

Congress reacted to the Commission's attempt to reevaluate its minority ownership policies by attaching a rider to the FCC's 1988 appropriations bill explicitly denying the Commission authority to spend any appropriated funds "to repeal, to retroactively apply changes in, or to continue a reexamination of, the policies of the Federal Communications Commission with respect to comparative licensing, distress sales and tax certificates granted under 26 U.S.C. 1071, to expand minority ownership of broadcasting licenses . . . ." Congress also ordered the Commission to terminate the proceeding reexamining its minority ownership programs and to reinstate the prior policy. Pub. L. No. 100-202, 101 Stat. 1329 (1987). This rider has been reenacted by Congress each year since 1988.

In the 1994 appropriations legislation, Congress clarified in the House Conference Report that the prohibition on reexamination is "intended to prevent the Commission from backtracking on its policies that provide incentives for minority participation in broadcasting" but that it "does not prohibit the agency from taking steps to create greater opportunities for minority ownership." H. Conf. Rep. No. 103-708, 103d Cong. 2d Sess. 40 (1994) (emphasis added). Therefore, the Commission has been greatly constrained in its ability to review the administration and effectiveness of the tax certificate program.

C. Administration of the Tax Certificate Program

Because the rider to the FCC's appropriations bill prevents the Commission from spending appropriated funds to impose limitations on the minority tax certificate program, the Commission must consider tax certificate requests in accordance with the policy as it was in effect in 1986, subject only to changes that would expand the policy.

A tax certificate allows a seller to defer capital gains taxes incurred in the sale of a communications property. Under Section 1071 of the Internal Revenue Code, this deferral can be accomplished by treating the sale as an involuntary conversion under 26 U.S.C. § 1033, with the recognition of gain postponed by the acquisition of qualified replacement property, or by electing to reduce the basis of certain depreciable property, or both.

Thus, the certificate provides incentives to licensees to sell to minority entrepreneurs, while at the same time enhancing the buyer's bargaining position and ability to attract capital. Section 1071 also encourages reinvestment in communications infrastructure by requiring the seller to reinvest the gains from a tax certificate transaction in similar property.

A request for a tax certificate is submitted to the Commission in letter or petition form. The request is usually filed in conjunction with a sale and, thus, the parties also are required to submit applications for consent to assign or transfer control of the relevant licenses. Ownership information about both the seller and buyer is contained in these applications, and any interested party may oppose the grant of the tax certificate or of the sale.

To qualify for a tax certificate, the minority buyer must demonstrate that minorities have voting control of the company that is purchasing the broadcast station or cable system, and that they own more than 20% of the company's equity. Minorities must maintain both legal and actual control over the operation of the business. The Commission evaluates these criteria to determine whether issuance of a tax certificate is warranted. Many requests for tax certificates have been denied or withdrawn because the proposed transaction did not meet FCC standards.

The minority status of individuals is determined by reference to the Office of Management and Budget's ethnic group or country of origin classifications. Qualified minority groups include African Americans, Hispanics, American Indians, Alaska Natives, Asians and Pacific Islanders.

The Commission reviews applications and tax certificate requests carefully and often asks the parties for additional information. The Commission has denied grant of tax certificates when the parties failed to demonstrate minority control or to satisfy other criteria. If the Commission determines that grant of a tax certificate is warranted under its tax certificate policies and prior tax certificate decisions, it will issue the certificate to the seller, which in turn submits it to the Internal Revenue Service with its tax return.

D. Results of the Tax Certificate Policy

The Commission's tax certificate policy has been instrumental in substantially increasing the number of broadcast licenses owned by minorities. Before 1978, minorities owned approximately .05 percent (40) of the approximately 8,500 total broadcast licenses issued by the FCC. A 1994 study performed by the National Telecommunications and Information Administration of the Department of Commerce indicates that as of September 1994, there were approximately 323 commercial radio and television stations owned by minorities, 2.9 percent of the total 11,128 licenses. The more than eight-fold increase in the number of broadcast licenses owned by minorities in the seventeen-year history of the Commission's tax certificate program underscores its importance and effectiveness in helping minorities overcome what the Commission identified in 1981 as the biggest obstacle to ownership -- lack of access to capital . The following chart details current minority broadcast ownership levels by industry and by ethnicity.

Industry Total	Black	Hispanic	Asian	Native American	Minority Totals
AM Stations 4,929	101 (2%)	76 (1.5%)	1 (0%)	2 (0%)	180 (3.7%)
FM Stations 5,044	71 (1.4%)	35 (.7%)	3 (.1%)	3 (.1%)	112 (2.2%)
TV Stations 1,155	21 (1.8%)	9 (.8%)	1 (.1%)	0 (0%)	31 (2.7%)
Cumulative Totals 11,128	193(1.7%)	120(1.1%)	5(0%)	5(0%)	323 (2.9%)

Between 1943 and 1994, the Commission issued approximately 536 tax certificates; 419 were issued between 1978 and 1994. Approximately 359 of the total involved sales to minority-owned entities. Of these, 285 involved radio station sales, 43 involved television and low power television sales, and 31 involved cable television transactions.

Although FCC regulations require the buyer of a property for which a tax certificate is issued to hold that station for one year, the overwhelming majority of minority buyers retain their licenses for much longer. Of the 303 broadcast transactions in which tax certificates were granted between 1978 and 1993, the average holding period was approximately five years. We have not included 1994 tax certificate transactions in this figure because those licenses have been held for less than one year. In more than 100 cases in which minority tax certificates were granted, the station still is held by the original minority purchaser.

The great majority of the transactions in which tax certificates are awarded are relatively small, averaging a sale price of $3.8 million for radio. The 43 minority tax certificates transactions involving television station sales have a higher average sale price of $32 million. Data is not available for the 31 cable sales, although we know that cable transactions tend to be larger than broadcast transactions.

The Committee expressed an interest in use of the tax certificate program during the last five years. Between 1990 and 1994, the Commission issued 128 minority tax certificates: 17 for television sales, 91 for radio transactions and 20 for cable transactions. The following chart breaks down the activity in each service by year.

Year	TV	Radio	Cable	Total
1990	8	38	5	51
1991	3	19	1	23
1992	0	9	4	13
1993	4	13	4	21
1994	2	12	6	20
Totals	17	91	20	128

III. Conclusion

The minority tax certificate policy is the cornerstone of the Commission's policies to remedy the underrepresentation of minorities in the ownership of broadcast and cable television facilities. Many of the broadcast and cable television facilities acquired by minorities since 1978 were acquired with the benefit of the tax certificate policy. The tax certificate program has been remarkably effective in helping minorities surmount the greatest obstacle to ownership -- attracting the necessary capital. Moreover, the tax certificate program is not a set aside or quota program. Rather, it is a minimally intrusive market-based incentive to remedy the underrepresentation of minorities in the ownership of broadcast and cable facilities. The program does not seem to have suffered from rampant abuse, such as a lack of real minority control of licenses or quick "flipping" of facilities.

At the same time, the Commission has been constrained in its ability to subject the program to a comprehensive reexamination. As with any program, this one could benefit from periodic review and improvement. If given the authority by Congress to undertake a reevaluation of the tax certificate policy, I am confident that the Commission could improve the administration and cost effectiveness of the minority tax certificate program.

This concludes my formal remarks. Once again, thank you for inviting the FCC to testify this morning. I would be happy to answer any of your questions.

EXHIBIT 2

ORAL TESTIMONY
OF THE STAFF
OF THE
JOINT COMMITTEE ON TAXATION
ON THE FCC TAX CERTIFICATE PROGRAM

BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
OF THE
HOUSE COMMITTEE ON WAYS AND MEANS
104th CONGRESS, 1st SESSION
ON
JANUARY 27, 1995

PRESENTED BY
KENNETH J. KIES
CHIEF OF STAFF
JOINT COMMITTEE ON TAXATION
U.S. CONGRESS

Thank you Madam Chairwoman. It is my pleasure to present the testimony of the Staff of the Joint Committee on Taxation at this hearing of the Oversight Subcommittee on the Federal Communications Commission's tax certificate program. My testimony will be in four parts: first, I will provide a brief overview of Internal Revenue Code section 1071 issues; second, I will describe the legislative background of section 1071 and the FCC tax certificate program; third, I will describe the application of the tax rules in those cases where an FCC tax certificate is granted; and fourth, I will briefly describe some of the tax policy issues the Committee may wish to consider in assessing section 1071.

Overview

Under present law, a taxpayer generally is required to include in gross income the gain recognized upon the sale or disposition of a business, including a broadcast business. An exception to this general rule under Code section 1071 provides that a seller of certain property who receives a tax certificate from the FCC may defer the recognition of gain on the sale indefinitely by either (1) electing to purchase replacement property within 2 years after the taxable year in which the sale occurs or (2) electing to reduce the basis of depreciable property held by the seller immediately after the sale or acquired by the seller in the taxable year of the sale. The deferred gain may be recognized upon the subsequent disposition, if any, of the replacement property. The purchaser of a broadcast business, whether or not pursuant to a tax certificate program, acquires a basis in the business equal to the purchase price paid, which may be eligible for depreciation or amortization deductions. The tax benefit provided by Code section 1071 is the ability to defer, in some cases permanently, what would otherwise be a current tax payment to later years. A long-term or indefinite deferral can constitute the equivalent of complete tax forgiveness.

Code section 1071 was originally enacted in 1943 to facilitate the sales of properties required to be disposed of because of certain prohibitions on ownership of multiple radio stations within the same market. This tax certificate program has been modified and expanded a number of times.

Minority ownership policy

In 1978, the FCC announced a policy of promoting minority ownership of broadcast facilities by offering an FCC tax certificate to those who voluntarily sell such facilities (either in the form of assets or stock) to minority-owned or controlled entities. The FCC's policy was based on the view that minority ownership of broadcast stations would provide a significant means of fostering the inclusion of minority views in programming, thereby serving the needs and interests of the minority community as well as enriching and educating the non-minority audience. The FCC subsequently expanded its policy to include the sale of cable television systems. In 1993, the FCC further expanded the program to apply to personal communication services. The FCC is in the process of auctioning 2,000 of these licenses.

"Minorities," within the meaning of the FCC's policy, include "Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders." As a general rule, a minority-controlled corporation is one in which more than 50 percent of the voting stock is held by minorities. A minority-controlled limited partnership is one in which the general partner is a minority or minority-controlled, and minorities have at least a 20-percent interest in the partnership. The FCC requires those who acquire broadcast properties with the help of the FCC tax certificate policy to hold those properties for at least one year. An acquisition can qualify even if there is a pre-existing agreement (or option) to buy out the minority interest at the end of the one-year holding period, provided that the transaction is at arms-length.

In 1982, the FCC further diversified its tax certificate policy for minority ownership. At that time, the FCC decided that, in addition to those who sell properties to minorities, investors who contribute to the stabilization of the capital base of a minority enterprise would be entitled to a tax certificate upon the subsequent sale of their interest in the minority entity.[1] Since 1987, in appropriations legislation, the Congress has prohibited the FCC from using any of its appropriated funds to repeal, to retroactively apply changes in, or to continue a reexamination of its comparative licensing, distress sale and tax certificate policies. This limitation has not prevented an expansion of the existing program.

Some recent news reports suggest that FCC tax certificates are not fostering "real" minority ownership of broadcast stations. In some instances, a minority investor purports to control the buyer (often through a limited partnership or other syndication) but effectively does not because of the small economic interest of the minority investor. In other instances, minority buyers are reported to have resold the broadcast property (or their interest in the property) shortly after the original sale.

The FCC tax certificate program functions as an open-ended tax expenditure with the FCC as authorizing agency. Since 1978, the FCC has issued 378 tax certificates under Code section 1071, 317 of which related to the sale of broadcast properties to minority-owned or minority-controlled buyers. The staff of the Joint Committee on Taxation previously has estimated the tax expenditure

---

[1] To qualify for an FCC tax certificate in this circumstance, an investor must either (1) provide start-up financing that allows a minority to acquire either broadcast or cable properties, or (2) purchase shares in a minority-controlled entity within the first year after the licenses necessary to operate the property is issued to the minority. In these situations, the status of the divesting investor and the purchaser of the divested interest is irrelevant, since the goal is to increase the financing opportunities available to minorities.

relating to Code section 1071 to be $500 million over the five fiscal years 1995-1999, although it is in the process of reviewing this estimate in light of new information it is receiving. The Treasury Dpartment has estimated the tax expenditure at $1.6 billion over the same period.

Legislative Background

Code section 1071 was originally enacted as part of the Revenue Act of 1943 to help the FCC implement a new policy that prohibited licensees from owning more than one radio station per market. Congress believed that the involuntary conversion rules (which generally permitted gain on sales to be excluded from taxable income if the proceeds of a sale were reinvested in property similar to the property involuntarily converted) should be applied to these transactions but needed to be liberalized for the FCC-ordered sales because, "[d]ue to wartime restrictions, the purchase of new radio property [would have been]... difficult."

The term "radio broadcasting" was expanded to include cable television in 1973. The use of FCC tax certificates was recently expanded in connection with the auction of personal communication services.

Other FCC minority ownership programs

Apart from the FCC tax certificate program, there are other programs administered by the FCC to foster minority ownership. The FCC awards comparative merit in licensing proceedings to minority applicants in the interest of promoting minority entrepreneurship. In addition, the FCC's distress sale policy allows broadcasting licensees whose licenses have been designated for revocation hearing, prior to the commencement of a hearing, to sell their station to a minority-owned or controlled entity, at a price "substantially" below its fair market value. A licensee whose license has been designated for hearing would ordinarily be prohibited from selling, assigning or otherwise disposing of its interest, until the issues have been resolved in the licensee's favor.

Viacom transaction

On January 20, 1995, Viacom Inc. (a publicly-traded company) and Mitgo Corp., a company wholly owned by Frank Washington, and affiliates of InterMedia Partners announced that they had signed a definitive agreement under which Viacom will sell its cable systems serving 1.1 million customers to a partnership, of which Mitgo is the general partner, for approximately $2.3 billion in cash. A subsidiary of TeleCommunications Inc. (a national cable television operator) is one of the limited partners of Intermedia. Recent news reports suggest that TeleCommunications Inc. will provide "nearly all" of the money for the cable system purchase. Mr. Washington will invest about $1 million of his money. Mr. Washington is an African American and apparently controls Mitgo for FCC purposes, which will be the general partner for the partnership acquiring the cable systems.

The sale is subject to customary conditions, approvals of local franchise authorities and receipt of an FCC tax certificate. Viacom said proceeds from the transaction, which is expected to be completed in the second half of 1995, will be used to repay debt.

As designed, the sale appears to meet the standards articulated by the FCC to qualify for a tax certificate pursuant to Code section 1071 even though the actual investment by Mr. Washington may be as little as $1 million. News reports and other available information indicate that the deferred gain on the Viacom sale can be reasonably expected to be in the range of $1.1 billion to $1.6 billion.